

46 Am. Jur. 2d Judges § 245

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Judges

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XII. Special, Substitute, or Pro Tem Judges

C. Rights, Powers, and Duties

§ 245. Duration of authority of substitute judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  25(2)

A special judge is generally appointed for the duration of a particular case, and may exercise authority until the disposition of the case,¹ whereas a judge pro tempore presides over the entire court only for the specified term of the appointment and does not have continuing jurisdiction over a case once the term has expired.² Other authority, though, has held that once a judge pro tempore has begun hearing evidence in a case, such judge has jurisdiction to hear the case to completion, even if the term has expired.³ Under a statute providing that a judge unable to preside at such judge's court for any cause may appoint in writing a pro tem judge during an absence, the appointment need not set forth the duration of the pro tem judge's authority.⁴

Unless reassigned, a judge who presided over the original trial of a case as a substitute judge is without authority to preside over a retrial of the case.⁵

A special judge who continues to preside after the regular judge dies or vacates the office⁶ or who is elected to hold a term of court during the absence of the regular judge, and in good faith undertakes to preside at a succeeding term in the continued absence of the regular judge,⁷ may be a judge de facto.⁸

The terms of the assignment order control when a visiting judge's authority terminates.⁹

An order temporarily assigning a municipal court judge to the court of common pleas that contains no expiration date expires, as a matter of law, no later than the date of the judge's mandatory retirement age.¹⁰

Footnotes

- 1 Boushehry v. State, 626 N.E.2d 497 (Ind. Ct. App. 1993); State ex rel. La Jesse v. Meisinger, 258 Minn. 297, 103 N.W.2d 864 (1960).
- 2 Boushehry v. State, 626 N.E.2d 497 (Ind. Ct. App. 1993).
- 3 Harris v. State, 616 N.E.2d 25 (Ind. Ct. App. 1993).
As to the effect of the presence of the regular judge on the authority of a special or pro tem judge, see § 246.
- 4 Koo v. State, 640 N.E.2d 95 (Ind. Ct. App. 1994).
- 5 Starnes v. Chapman, 793 S.W.2d 104 (Tex. App. Dallas 1990).
- 6 Feck v. Com., 264 Ky. 556, 95 S.W.2d 25 (1936); Lowe v. State, 83 Tex. Crim. 134, 201 S.W. 986 (1918).
- 7 Ridout v. State, 161 Tenn. 248, 30 S.W.2d 255, 71 A.L.R. 830 (1930).
- 8 As to judge de facto, see §§ 226 to 231.
- 9 Mangone v. State, 156 S.W.3d 137 (Tex. App. Fort Worth 2005), petition for discretionary review refused, (June 15, 2005).
- 10 Slaughter v. Com., Dept. of Transp., Bureau of Driver Licensing, 819 A.2d 1209 (Pa. Commw. Ct. 2003).

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